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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,114	11/13/2001	Raymond H. Boutin	AHPICUSA	5743

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EXAMINER

CROUCH, DEBORAH

ART UNIT	PAPER NUMBER
1632	7

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,114

Applicant(s)

BOUTIN, RAYMOND H.

Examiner

Deborah Crouch, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-48 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

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Claims 1-2, 4-9 and 17-48 link inventions I-XIV. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claim(s), claims 1-2, 4-9 and 17-48. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application. Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes therapeutic agents, classified in class 514, subclass 44.
- II. Claims 3 and 10-16, drawn to a method for the transfer of a nucleic acid composition to cells and method of immunization against a pathogen comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes a vaccine, classified in class 514, subclass 44.
- III. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells

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comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes foodstuffs, classified in class 514, subclass 44.

- IV. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes nutritional supplements, classified in class 514, subclass 44.
- V. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes compounds of agricultural significance, classified in class 514, subclass 44.
- VI. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes herbicides, classified in class 514, subclass 44.
- VII. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes plant growth regulants, classified in class 514, subclass 44.
- VIII. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes insecticides, classified in class 514, subclass 44.
- IX. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells

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comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes miticides, classified in class 514, subclass 44.

- X. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes rodenticides, classified in class 514, subclass 44.
- XI. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes fungicides, classified in class 514, subclass 44.
- XII. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes products useful in animal health, classified in class 514, subclass 44.
- XIII. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes parasiticides, classified in class 514, subclass 44.
- XIV. Claim 3, drawn to a method for the transfer of a nucleic acid composition to cells comprising the step of introducing to a multifunctional complex into cells comprising a nucleic acid composition and a transfer moiety where the nucleic acid encodes nematocides, classified in class 514, subclass 44.

Inventions I-XIV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation,

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different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions. Each of the inventions of groups I-XIV has different modes of operation and different effects. Each group is directed to materially different and separate class of proteins that possess materially different and separation modes of biochemical activities with the result that each expressed protein would have separate biochemical effects with in the cell or individual.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

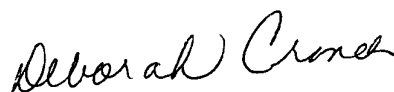
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Crouch, Ph.D. whose telephone number is 703-308-1126. The examiner can normally be reached on M-Th, 8:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah J. Reynolds can be reached on 703-305-4051. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Deborah Crouch, Ph.D.
Primary Examiner
Art Unit 1632

August 8, 2003